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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS HOLDING CORPORATION,

Debtors<sup>1</sup>.

Chapter 11

Case No. 18-23538 (RDD)

(Joint Administration)

**LIMITED OBJECTION OF MCDONALD'S CORPORATION TO  
NOTICE OF CURE COSTS AND POTENTIAL ASSUMPTION AND  
ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED  
LEASES IN CONNECTION WITH GLOBAL SALE TRANSACTION**

McDonald's Corporation ("McDonald's"), by and through its attorneys, hereby files this limited objection (the "Objection") to (a) the *Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction* [Docket No. 1731] (the "Cure Notice"). In support of this Objection, McDonald's states as follows:

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innoval Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); Bluel.brht.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Koart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

## **BACKGROUND**

1. On October 15, 2018 (the “Petition Date”) and continuing thereafter, the above-captioned debtors (collectively, the “Debtors”) each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors have continued to operate its business and manage its properties as debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

2. McDonald’s and the Debtors are party to multiple executory contracts and unexpired leases throughout the country.

3. On November 19, 2018, the United States Bankruptcy Court for the Southern District of New York (the “Court”) entered the *Order Approving Global Bidding Procedures and Granting Related Relief* [Docket No. 816] (the “Global Bidding Procedures Order”).<sup>2</sup>

4. In accordance with the Global Bidding Procedures Order, on January 18, 2019, the Debtors filed the *Notice of Successful Bidder and Sale Hearing* (the “Successful Bidder Notice”) [Docket No. 1730], which among other things, announced that the Debtors determined that the offer submitted by Transform Holdco, LLC (the “Buyer”), established by ESL Investments, Inc. to acquire all or substantially all of the global assets, was the highest or best offer for the global assets. A copy of the asset purchase agreement between the Debtors and the Buyer (the “APA”) is attached to the Successful Bidder Notice as Exhibit B.

5. On January 18, 2019, the Debtors filed the Cure Notice. Exhibit A to the Cure Notice lists three (3) contracts with McDonald’s (collectively, the “Contracts”). *See* Cure Notice, Exhibit A, page 205 of 342, nos. 4750, 4751, and 4752. The Cure Notice indicates that

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Global Bidding Procedures Order.

the cure amount for each of the Contracts is \$0.00 (the “Proposed Cure Amount”). *See Exhibit A* (excerpt attached in relevant part).

**OBJECTION**

6. McDonald’s objects to the Cure Notice because it fails to provide any information pertaining to the Contracts, thereby making it impossible to verify the Debtor’s Proposed Cure Amount for each of the Contracts. In order to assume and assign these Contracts to the Buyer, the Debtors and the Buyer must promptly cure all defaults. *See* 11 U.S.C. § 365(b)(1). McDonald’s also has numerous executory contracts and leases that may not involve cure amounts, but do implicate either responsibilities on their part, or that of the Debtors and its affiliates. These non-monetary obligations cannot be assessed due to the lack of information regarding the leases. Without any sort of information to assist in identifying the lease either by address or some other identifying information, McDonald’s cannot adequately respond to any deadlines regarding the treatment of its executory contracts and unexpired leases. McDonald’s also has not received any adequate assurance information to date.<sup>3</sup>

**RESERVATION OF RIGHTS**

7. McDonald’s continues to review the APA, the proposed sale order, and other relevant documents and information that have been filed with the Court. In addition, Schedule 2.7(a) to the APA (the “Potential Transferred Agreements”) has not been filed with the Court, and additional pleadings and information to the Objection may be filed or disclosed after the filing of this Objection. Accordingly, McDonald’s expressly reserves the right to amend this Objection.

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<sup>3</sup> McDonald’s Corporation filed the *Notice of Appearance and Request for Documents* [Docket No. 1543] on January 10, 2019. To the extent that the notice of appearance was filed after the adequate assurance package was sent, McDonald’s respectfully requests that undersigned counsel receive a copy of any notice or adequate assurance package that would not be filed on the docket.

WHEREFORE, McDonald's respectfully requests that this Court enter an Order: (1) requiring the Debtors to properly identify the Contracts it potentially seeks to assume and assign to the Buyer; (2) requiring the Debtors or the Buyer to cure any default under the identified Contracts if they are assumed and/or assigned (3) and in the event the Buyer does not wish to take an assignment of the Contracts, permitting McDonald's to immediately cease providing the services and performing any obligations pursuant to the Contracts related to the stores and other premises that were sold to the Buyer; and (4) granting such other and further relief as is just and appropriate.

Date: January 25, 2019

**ELLIOTT GREENLEAF, P.C.**

/s/ Rafael X. Zahralddin-Aravena

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